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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2011-11*

13 **DWAYNE WHITEHEAD**
17136 Vista Cielo
Fontana, CA 92337

ACCUSATION

14 Registered Nurse License No. RN 651729

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about January 31, 2005, the Board of Registered Nursing (Board) issued
24 Registered Nurse License Number RN 651729 to Dwayne Whitehead (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2012, unless renewed.

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1 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
2 thereof.

3 7. Section 2764 provides in part that the expiration of a license shall not deprive the
4 Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a
5 decision imposing discipline on the license.

6 **REGULATORY PROVISIONS**

7 8. California Code of Regulations, title 16, section 1444, states in part:

8 "A conviction or act shall be considered to be substantially related to the qualifications,
9 functions or duties of a registered nurse if to a substantial degree it evidences the present or
10 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
11 safety, or welfare."

12 **COST RECOVERY**

13 9. Section 125.3 of the Code provides in part that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Convictions of Substantially-Related Crimes)**

19 10. Respondent is subject to disciplinary action under section 2761, subdivision (f), in
20 conjunction with California Code of Regulations, title 16, section 1444, in that Respondent has
21 been convicted of crimes that are substantially related to the qualifications, functions, and duties
22 of a registered nurse.

23 a. On or about April 29, 2009, after pleading guilty, Respondent was convicted of one
24 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) (driving under the
25 influence), and Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content
26 level greater than .08%] in the criminal proceeding entitled *The People of the State of California*
27 *v. Dwayne Whitehead* (Super. Ct. Riverside County, 2009, No. RIM30476). Respondent was
28 sentenced to fifteen days in the county jail, and placed on probation for four years with terms and

1 conditions that included completion of an eighteen-month program for second-offenders. The
2 underlying factual circumstances occurred on or about March 14, 2009 when officers of the
3 Riverside County Sheriff's Department stopped Respondent after observing him driving in the
4 wrong direction on Sunnymead Boulevard. Respondent displayed objective signs of impairment,
5 and admitted that he had been drinking alcohol earlier that evening. His blood-alcohol-content
6 was 0.106%. He was then arrested and taken into custody.

7 b. On or about December 7, 2006, after pleading guilty, Respondent was convicted of
8 one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving with a
9 blood-alcohol content level greater than 0.08%], in the criminal proceeding entitled *The People of*
10 *the State of California v. Dwayne Whitehead* (Super. Ct. San Bernardino County, 2006, No.
11 TWV052675). Respondent was placed on three years probation with terms and conditions that
12 included completed required completion of a first-offender alcohol education program. The
13 underlying factual circumstances occurred on or about September 1, 2006 when officers of the
14 Upland Police Department responded to a report of drunk driving. The officers observed
15 Respondent swaying and swerving between lanes, and observed additional objective signs of
16 impairment while speaking with him.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 11. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
20 conjunction with section 2762, subdivision (b), in that Respondent used alcohol in a manner
21 dangerous to himself and others. Complainant refers to, and incorporates, all of the allegations
22 set forth in paragraph 10, including its subparagraphs as though set forth fully.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Alcohol-Related Convictions)**

25 12. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
26 conjunction with section 2761, subdivision (c), in that Respondent has been convicted of alcohol-
27 related crimes. Complainant refers to, and incorporates, all of the allegations set forth in
28 paragraph 10, including its subparagraphs as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License Number RN 651729, issued to Dwayne Whitehead;
2. Ordering Dwayne Whitehead to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/16/10

Louise R. Bailey
Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Complainant

LA2010600091